



General Assembly

February Session, 2016

Raised Bill No. 5377

LCO No. 670



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING THE PREVAILING WAGE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2016*) (a) For purposes of this
2 section:

3 (1) "Business organization" means any sole proprietorship,
4 partnership, corporation, limited liability company, association, firm or
5 other form of business or legal entity;

6 (2) "Financial assistance" means any and all forms of loans, cash
7 payments, extensions of credit, guarantees, equity investments, tax
8 abatements or any other form of financing; and

9 (3) "Project" means any construction, remodeling, refinishing,
10 refurbishing, rehabilitation, alteration or repair of any property owned
11 by a business organization.

12 (b) On and after January 1, 2017, if the state or any agency of the
13 state, including, but not limited to, the Department of Economic and
14 Community Development and Connecticut Innovations, Incorporated,

15 provides financial assistance to any business organization for any
16 project of such business organization, the state or any agency of the
17 state shall require, as a condition of providing such financial
18 assistance, that any contract entered into by the business organization
19 for such project shall contain the following provision: "The wages paid
20 on an hourly basis to any person performing the work of any
21 mechanic, laborer or worker on the work herein contracted to be done
22 and the amount of payment or contribution paid or payable on behalf
23 of each such person to any employee welfare fund, as defined in
24 subsection (i) of section 31-53 of the general statutes, as amended by
25 this act, shall be at a rate equal to the rate customary or prevailing for
26 the same work in the same trade or occupation in the town in which
27 such construction, remodeling, refinishing, refurbishing, rehabilitation,
28 alteration or repair project is being undertaken. Any contractor who is
29 not obligated by agreement to make payment or contribution on behalf
30 of such persons to any such employee welfare fund shall pay to each
31 mechanic, laborer or worker as part of such person's wages the amount
32 of payment or contribution for such person's classification on each pay
33 day."

34 (c) Any contractor or subcontractor who knowingly or wilfully
35 employs any mechanic, laborer or worker in any project receiving
36 financial assistance from the state or any agency of the state for such
37 project, at a rate of wage on an hourly basis that is less than the rate
38 customary or prevailing for the same work in the same trade or
39 occupation in the town in which such project is located, or who fails to
40 pay the amount of payment or contributions paid or payable on behalf
41 of each such person to any employee welfare fund, or in lieu thereof to
42 the person, as provided by subsection (b) of this section, shall be fined
43 not less than two thousand five hundred dollars but not more than five
44 thousand dollars for each offense and (1) for the first violation, shall be
45 disqualified from bidding on contracts for projects for which the state
46 or any agency of the state provides financial assistance until the
47 contractor or subcontractor has made full restitution of the back wages

48 owed to such persons and for an additional six months thereafter, and
49 (2) for subsequent violations, shall be disqualified from bidding on
50 contracts for projects for which the state or any agency of the state
51 provides financial assistance until the contractor or subcontractor has
52 made full restitution of the back wages owed to such persons and for
53 not less than an additional two years thereafter. In addition, if it is
54 found by the contracting officer representing the business organization
55 that any mechanic, laborer or worker employed by the contractor or
56 any subcontractor directly on the site for the work covered by the
57 contract has been or is being paid a rate of wages less than the rate of
58 wages required by the contract to be paid as required by this section,
59 the business organization may (A) by written or electronic notice to the
60 contractor, terminate such contractor's right to proceed with the work
61 or such part of the work as to which there has been a failure to pay
62 said required wages and to prosecute the work to completion by
63 contract or otherwise, and the contractor and the contractor's sureties
64 shall be liable to the business organization for any excess costs
65 occasioned the business organization thereby, or (B) withhold payment
66 of money to the contractor or subcontractor. The contracting business
67 organization shall, not later than two days after taking such action,
68 notify the Labor Commissioner, in writing or electronically, of the
69 name of the contractor or subcontractor, the project involved, the
70 location of the work, the violations involved, the date the contract was
71 terminated and steps taken to collect the required wages.

72 (d) The Labor Commissioner may make complaint to the proper
73 prosecuting authorities for the violation of any provision of subsection
74 (c) of this section.

75 (e) The Labor Commissioner shall predetermine the prevailing rate
76 and the amount of payment or contributions paid or payable on behalf
77 of each person to any employee welfare fund, as defined in subsection
78 (i) of section 31-53 of the general statutes, as amended by this act, in
79 each town where such contract is to be performed, in the same manner
80 as provided in subsection (d) of section 31-53 of the general statutes, as

81 amended by this act.

82 Sec. 2. Section 31-53 of the general statutes is repealed and the
83 following is substituted in lieu thereof (*Effective July 1, 2016*):

84 (a) Each contract for the construction, remodeling, refinishing,
85 refurbishing, rehabilitation, alteration or repair of any public works
86 project by the state or any of its agents, or by any political subdivision
87 of the state or any of its agents, shall contain the following provision:
88 "The wages paid on an hourly basis to any person performing the
89 work of any mechanic, laborer or worker on the work herein
90 contracted to be done and the amount of payment or contribution paid
91 or payable on behalf of each such person to any employee welfare
92 fund, as defined in subsection (i) of this section, shall be at a rate equal
93 to the rate customary or prevailing for the same work in the same
94 trade or occupation in the town in which such public works project is
95 being constructed. Any contractor who is not obligated by agreement
96 to make payment or contribution on behalf of such persons to any such
97 employee welfare fund shall pay to each mechanic, laborer or worker
98 as part of such person's wages the amount of payment or contribution
99 for such person's classification on each pay day."

100 (b) Any contractor or subcontractor who knowingly or wilfully
101 employs any mechanic, laborer or worker in the construction,
102 remodeling, refinishing, refurbishing, rehabilitation, alteration or
103 repair of any public works project for or on behalf of the state or any of
104 its agents, or any political subdivision of the state or any of its agents,
105 at a rate of wage on an hourly basis that is less than the rate customary
106 or prevailing for the same work in the same trade or occupation in the
107 town in which such public works project is being constructed,
108 remodeled, refinished, refurbished, rehabilitated, altered or repaired,
109 or who fails to pay the amount of payment or contributions paid or
110 payable on behalf of each such person to any employee welfare fund,
111 or in lieu thereof to the person, as provided by subsection (a) of this
112 section, shall be fined not less than two thousand five hundred dollars

113 but not more than five thousand dollars for each offense and (1) for the
114 first violation, shall be disqualified from bidding on contracts with the
115 state or any political subdivision until the contractor or subcontractor
116 has made full restitution of the back wages owed to such persons and
117 for an additional six months thereafter, and (2) for subsequent
118 violations, shall be disqualified from bidding on contracts with the
119 state or any political subdivision until the contractor or subcontractor
120 has made full restitution of the back wages owed to such persons and
121 for not less than an additional two years thereafter. In addition, if it is
122 found by the contracting officer representing the state or political
123 subdivision of the state that any mechanic, laborer or worker
124 employed by the contractor or any subcontractor directly on the site
125 for the work covered by the contract has been or is being paid a rate of
126 wages less than the rate of wages required by the contract to be paid as
127 required by this section, the state or contracting political subdivision of
128 the state may (A) by written or electronic notice to the contractor,
129 terminate such contractor's right to proceed with the work or such part
130 of the work as to which there has been a failure to pay said required
131 wages and to prosecute the work to completion by contract or
132 otherwise, and the contractor and the contractor's sureties shall be
133 liable to the state or the contracting political subdivision for any excess
134 costs occasioned the state or the contracting political subdivision
135 thereby, or (B) withhold payment of money to the contractor or
136 subcontractor. The contracting department of the state or the political
137 subdivision of the state shall, not later than two days after taking such
138 action, notify the Labor Commissioner, in writing or electronically, of
139 the name of the contractor or subcontractor, the project involved, the
140 location of the work, the violations involved, the date the contract was
141 terminated, and steps taken to collect the required wages.

142 (c) The Labor Commissioner may make complaint to the proper
143 prosecuting authorities for the violation of any provision of subsection
144 (b) of this section.

145 (d) For the purpose of predetermining the prevailing rate of wage

146 on an hourly basis and the amount of payment or contributions paid or
147 payable on behalf of each person to any employee welfare fund, as
148 defined in subsection (i) of this section, in each town where such
149 contract is to be performed, the Labor Commissioner shall (1) hold a
150 hearing at any required time to determine the prevailing rate of wages
151 on an hourly basis and the amount of payment or contributions paid or
152 payable on behalf of each person to any employee welfare fund, as
153 defined in subsection (i) of this section, upon any public work within
154 any specified area, and shall establish classifications of skilled,
155 semiskilled and ordinary labor, or (2) adopt and use such appropriate
156 and applicable prevailing wage rate determinations as have been made
157 by the Secretary of Labor of the United States under the provisions of
158 the Davis-Bacon Act, as amended.

159 (e) The Labor Commissioner shall determine the prevailing rate of
160 wages on an hourly basis and the amount of payment or contributions
161 paid or payable on behalf of such person to any employee welfare
162 fund, as defined in subsection (i) of this section, in each locality where
163 any such public work is to be constructed, and the agent empowered
164 to let such contract shall contact the Labor Commissioner, at least ten
165 but not more than twenty days prior to the date such contracts will be
166 advertised for bid, to ascertain the proper rate of wages and amount of
167 employee welfare fund payments or contributions and shall include
168 such rate of wage on an hourly basis and the amount of payment or
169 contributions paid or payable on behalf of each person to any
170 employee welfare fund, as defined in subsection (i) of this section, or in
171 lieu thereof the amount to be paid directly to each person for such
172 payment or contributions as provided in subsection (a) of this section
173 for all classifications of labor in the proposal for the contract. The rate
174 of wage on an hourly basis and the amount of payment or
175 contributions to any employee welfare fund, as defined in subsection
176 (i) of this section, or cash in lieu thereof, as provided in subsection (a)
177 of this section, shall, at all times, be considered as the minimum rate
178 for the classification for which it was established. Prior to the award of

179 any contract, purchase order, bid package or other designation subject
180 to the provisions of this section, such agent shall certify to the Labor
181 Commissioner, either in writing or electronically, the total dollar
182 amount of work to be done in connection with such public works
183 project, regardless of whether such project consists of one or more
184 contracts. Upon the award of any contract subject to the provisions of
185 this section, the contractor to whom such contract is awarded shall
186 certify, under oath, to the Labor Commissioner the pay scale to be used
187 by such contractor and any of the contractor's subcontractors for work
188 to be performed under such contract.

189 (f) Each employer subject to the provisions of this section, [or]
190 section 31-54 or section 1 of this act shall (1) keep, maintain and
191 preserve such records relating to the wages and hours worked by each
192 person performing the work of any mechanic, laborer and worker and
193 a schedule of the occupation or work classification at which each
194 person performing the work of any mechanic, laborer or worker on the
195 project is employed during each work day and week in such manner
196 and form as the Labor Commissioner establishes to assure the proper
197 payments due to such persons or employee welfare funds under this
198 section, [or] section 31-54 or section 1 of this act, regardless of any
199 contractual relationship alleged to exist between the contractor and
200 such person, provided such employer shall have the option of keeping,
201 maintaining and preserving such records in an electronic format, and
202 (2) submit monthly to the contracting agency, or the state or any
203 agency of the state providing financial assistance pursuant to section 1
204 of this act, by mail, electronic mail or other method accepted by such
205 agency, a certified payroll that shall consist of a complete copy of such
206 records accompanied by a statement signed by the employer that
207 indicates (A) such records are correct; (B) the rate of wages paid to
208 each person performing the work of any mechanic, laborer or worker
209 and the amount of payment or contributions paid or payable on behalf
210 of each such person to any employee welfare fund, as defined in
211 subsection (i) of this section, are not less than the prevailing rate of

212 wages and the amount of payment or contributions paid or payable on
213 behalf of each such person to any employee welfare fund, as
214 determined by the Labor Commissioner pursuant to subsection (d) of
215 this section, and not less than those required by the contract to be paid;
216 (C) the employer has complied with the provisions of this section,
217 [and] section 31-54 and section 1 of this act; (D) each such person is
218 covered by a workers' compensation insurance policy for the duration
219 of such person's employment, which shall be demonstrated by
220 submitting to the contracting agency the name of the workers'
221 compensation insurance carrier covering each such person, the
222 effective and expiration dates of each policy and each policy number;
223 (E) the employer does not receive kickbacks, as defined in 41 USC 52,
224 from any employee or employee welfare fund; and (F) pursuant to the
225 provisions of section 53a-157a, the employer is aware that filing a
226 certified payroll which the employer knows to be false is a class D
227 felony for which the employer may be fined up to five thousand
228 dollars, imprisoned for up to five years, or both. This subsection shall
229 not be construed to prohibit a general contractor from relying on the
230 certification of a lower tier subcontractor, provided the general
231 contractor shall not be exempted from the provisions of section 53a-
232 157a if the general contractor knowingly relies upon a subcontractor's
233 false certification. Notwithstanding the provisions of section 1-210, the
234 certified payroll shall be considered a public record and every person
235 shall have the right to inspect and copy such records in accordance
236 with the provisions of section 1-212. The provisions of subsections (a)
237 and (b) of section 31-59 and sections 31-66 and 31-69 that are not
238 inconsistent with the provisions of this section, [or] section 31-54 or
239 section 1 of this act apply to this section. Failing to file a certified
240 payroll pursuant to subdivision (2) of this subsection is a class D felony
241 for which the employer may be fined up to five thousand dollars,
242 imprisoned for up to five years, or both.

243 (g) Any contractor who is required by the Labor Department to
244 make any payment as a result of a subcontractor's failure to pay wages

245 or benefits, or any subcontractor who is required by the Labor
246 Department to make any payment as a result of a lower tier
247 subcontractor's failure to pay wages or benefits, may bring a civil
248 action in the Superior Court to recover no more than the damages
249 sustained by reason of making such payment, together with costs and
250 a reasonable attorney's fee.

251 (h) The provisions of this section do not apply where the total cost
252 of all work to be performed by all contractors and subcontractors in
253 connection with new construction of any public works project is less
254 than four [hundred thousand] million dollars or where the total cost of
255 all work to be performed by all contractors and subcontractors in
256 connection with any remodeling, refinishing, refurbishing,
257 rehabilitation, alteration or repair of any public works project is less
258 than [one hundred thousand] two million dollars.

259 (i) As used in this section, [and] section 31-54 and section 1 of this
260 act, "employee welfare fund" means any trust fund established by one
261 or more employers and one or more labor organizations or one or
262 more other third parties not affiliated with the employers to provide
263 from moneys in the fund, whether through the purchase of insurance
264 or annuity contracts or otherwise, benefits under an employee welfare
265 plan; provided such term shall not include any such fund where the
266 trustee, or all of the trustees, are subject to supervision by the Banking
267 Commissioner of this state or any other state or the Comptroller of the
268 Currency of the United States or the Board of Governors of the Federal
269 Reserve System, and "benefits under an employee welfare plan" means
270 one or more benefits or services under any plan established or
271 maintained for persons performing the work of any mechanics,
272 laborers or workers or their families or dependents, or for both,
273 including, but not limited to, medical, surgical or hospital care
274 benefits; benefits in the event of sickness, accident, disability or death;
275 benefits in the event of unemployment, or retirement benefits.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2016</i>	New section
Sec. 2	<i>July 1, 2016</i>	31-53

Statement of Purpose:

To require business organizations that receive financial assistance from the state for construction projects to abide by the prevailing wage requirements and to raise the threshold amounts at which public works projects shall be subject to the prevailing wage requirements.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]